

SEVERANCE & RELEASE AGREEMENT

This Severance & Release Agreement ("Agreement") is entered into by and between Nicole Shen ("Employee"), and Humane Society of the Desert, a California non-profit corporation ("HSD" or "Employer"). Employer and Employee are referred to collectively sometimes herein as the "Parties," under the following circumstances:

RECITALS:

WHEREAS, Employee is currently employed with Employer at the Animal Hospital of Desert Hot Springs; and

WHEREAS, the Parties acknowledge that Employee's employment relationship with Employer is terminated effective as of December 12, 2018 (the "Separation Date"), because Employer has decided to close down the Animal Hospital of Desert Hot Springs ("Hospital") for economic and other business reasons and to lay off all hospital staff; and

WHEREAS, Employee and Employer now desire to compromise, finally settle, and fully release any and all claims which they may have or claim to have against each other, by the terms of this Agreement.

NOW THEREFORE, in consideration of their mutual covenants and promises set forth herein, Employee and Employer agree as follows:

TERMS AND CONDITIONS:

1. Incorporation of Recitals. The above-stated recitals are hereby expressly made a part of this Agreement.

2. Settlement/Severance Payment Terms. In full and complete settlement of any and all possible claims, the Parties agree as follows:

2.1 Severance Sum. Employer will pay directly to Employee the severance sum of Employee's estimated pay through the end of the year, at Employee's current wage rate, based upon the Employee's typical past schedule, hours and wages, for the time period December 11 through December 31, 2018 in the amount of ~~One thousand five hundred sixty dollars~~ (\$ 1560.00), subject to applicable withholdings and deductions (the "Severance Sum"). Employer will make the payment following Employee's execution of this Agreement.

2.2 Full Settlement of All Claims. Employee agrees to accept the Severance Sum and the other performances by Employer herein as full settlement of any and all claims arising out of Employee's association or employment with Employer and in full settlement of any other claims Employee may have against Employer.

2.3 Wages and Compensation Paid in Full. Employee agrees that Employer's payment of the Severance Sum shall fully compensate Employee for any and all claims arising from or associated with Employee's employment with Employer, and that the Severance Sum is an amount *in excess of* any wages, vacation pay, or other compensation due from Employer to Employee. Employee acknowledges that Employee has already been paid accurately by Employer for any and all earned wages, unused accrued vacation leave, reimbursement of Employee's out of pocket expenses, and all other compensation or reimbursement of expenses due from Employer through the date Employee employment ended.

2.4 No Contest of Unemployment Claim. In exchange for Employee's compliance with this Agreement's terms, including the Confidentiality and Nondisparagement provisions herein, Employer agrees not to contest Employee's application for unemployment benefits.

3. Release of Claims by Employee. In exchange for the promises contained in this Agreement and the settlement funds described herein, which the Parties acknowledge constitute good and valuable consideration, and to the extent permitted by law, Employee hereby waives, releases and forever discharges, and agrees that Employee will not in any manner institute, prosecute or pursue, any and all complaints, claims, charges, liabilities, claims for relief, demands, suits, actions or causes of action, whether in law or in equity, which Employee asserts or could assert, at common law or under any statute, rule, regulation, order or law, whether federal, state, or local, or on any grounds whatsoever, including but not limited to, any claims under Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, Government Code §12900 *et seq.*, the California Labor Code, the Americans with Disabilities Act, the California Family Leave Act, and the Employment Retirement Income Security Act of 1974 against Employer and any of its or their current or former representatives, agents, officers, directors, employees, volunteers, attorneys, insurance carriers, and their respective successors or predecessors, past or present (collectively referred to as the "Released Parties") with respect to any event, matter, claim, damage or injury arising out of Employee's employment relationship with Employer, and the termination of such employment relationship, and with respect to any other claim, matter, or event arising prior to execution of this Agreement by Employee. This release does not apply to rights that cannot be waived as a matter of law, including but not limited to worker's compensation claims arising under California Labor Code Section 2802 or unemployment claims.

3.1 No Claims or Lawsuits. Employee represents that Employee has not filed or asserted any complaints, claims, or actions against the Released Parties with any state, federal, or local governmental agency or court or arbitrator and that Employee will not do so at any time hereafter, and that if any agency, court, or arbitrator assumes jurisdiction of any complaint, claim, or action against the Released Parties, Employee will direct that agency, court, or arbitrator to withdraw from or dismiss with prejudice the matter.

3.2 No Assistance. Employee understands that if this Agreement were not signed, Employee would have the right to voluntarily assist other individuals or entities in bringing claims against Employer or the Released Parties. Employee further understands and agrees that Employee waives such right and Employee shall not aid or assist others in their pursuit of claims against the Employer unless: (a) Employee is required to provide such assistance pursuant to a court order, or

(b) Employee's assistance is sought by the EEOC or any other federal, state or local governmental entity.

4. Civil Code § 1542 Waiver. As a further consideration and inducement for this Agreement, Employee hereby waives any and all rights under Section 1542 of the California Civil Code or any similar state, local, or federal law, statute, rule, order or regulation Employee may have with respect to any of its Released Parties. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIM OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated injuries and damages as well as those that are now disclosed.

Employee further acknowledges that Employee has read or been advised of their rights under Section 206.5 of the California Labor Code, which provides as follows:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

Employee understands that Section 206.5 gives Employee the right not to release claims for wages if they are concededly due. Employee acknowledges and agrees, however, that Employer disputes in good-faith that it owes Employee any wages, penalties, fees, costs, or interest, and further that it has paid upon the separation of their employment all wages concededly due and owing to Employee. Thus, any consideration that Employee receives as the result of executing this Agreement is to resolve disputed claims. Accordingly, Employee is fully aware of their rights under Section 206.5, and hereby voluntarily enters into this Agreement.

5. Voluntary Agreement. Employee understands and agrees that Employee has carefully read and fully understands all of the provisions of this Agreement, which is written in a manner that Employee clearly understands, that Employee knowingly and voluntarily agrees to all of the terms in this Agreement, that Employee knowingly and voluntarily intends to be legally bound by this Agreement, and that Employee is encouraged to consult with an attorney of their choice prior to signing this Agreement.

6. No Admission of Liability. Employee understands, acknowledges and agrees that this is a compromise settlement of known, unknown, prospective and/or pending claims, demands, causes of action and/or remedies that have been, could have been, or yet could be asserted to, and that Employer shall not be deemed or construed at any time or for any purpose as having admitted liability.

7. Joint Participation in Preparation of Agreement. The Parties hereto participated jointly in the negotiation and preparation of this Agreement, and each Party has had the opportunity to obtain the advice of legal counsel and to review, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party. This Agreement shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of the other.

8. Entire Agreement.

8.1 The Parties intend that the terms of this Agreement are a final expression of their agreement, and constitute the entire agreement between the Parties with respect to such terms included herein. This Agreement may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement supersedes and replaces all prior negotiations, written or oral, related to the employment relationship between the Parties. Each of the Parties acknowledges that no promise, representation, or warranty whatsoever, express or implied, written or oral, has been made concerning the employment relationship between the Parties, and/or this Agreement which has not been set forth herein.

8.2 The Parties further intend that this Agreement constitutes a complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding. Each of the Parties acknowledges that no other Party has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein concerning the subject matter hereof, to induce the execution of this instrument, and each of the Parties acknowledges that it has not executed this instrument in reliance on any promise or representation or warranty not contained herein.

8.3 Upon execution of this Agreement, the Parties owe no further duties or obligations to each other with respect to Employee's employment with Employer, except as set forth in this Agreement.

9. Modifications. Neither this Agreement, nor any term or provision thereof, may be waived, modified, or amended except by written agreement signed by all Parties.

10. Attorney Fees and Costs.

10.1 As further mutual consideration of the promises set forth herein, the Parties agree that there is no prevailing Party in this matter and they each are responsible for their own attorney fees and costs. The Parties agree that they will not seek from the other reimbursement for attorney fees and/or costs incurred in this action or relating to any matters addressed in this Agreement.

10.2 In the event any arbitration or suit by either Party hereto against the other Party, by reason of any breach or alleged breach of the covenants and agreements set forth in this Agreement, or should any action be brought to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to have and recover from the other Party all costs and expenses of suit, including reasonable attorney fees.

11. **Section Headings.** Section headings in this Agreement are included for convenience of reference only and shall not be considered a part of this Agreement for any other purpose.

12. **Binding Upon Successors.** Employee understands and agrees that this Agreement shall bind the benefit of the Parties' spouses, children and heirs, if any, the Parties' employees, partners, officers, directors, members, successors, predecessors, agents, attorneys, insurance carriers, representatives and assigns, if any.

13. **Applicable Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

14. **Scope of Agreement.** Employee hereby affirms and acknowledges that Employee has read the foregoing Agreement, that Employee has had sufficient time and opportunity to review or discuss it with the counsel of their choice, and that Employee fully understands and appreciates the meaning of each of its terms, and that it is a voluntary, full and final compromise, release and settlement of all claims, known or unknown, with respect to the claims identified and referred to herein. The Parties to this Agreement represent that this Agreement may be used as evidence in any subsequent proceeding in which any of the Parties alleges a breach of this Agreement or seeks to enforce its terms, provisions or obligations.

15. **Severability.** If any part of this Agreement is said unlawful or not effective, the remainder of this Agreement shall remain in full force and effect.

16. **Counterparts.** This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original hereof.

17. **Authority.** Any Party signing this Agreement on behalf of an entity other than the person individually hereby represents and warrants that such Party has authority to sign on behalf of the indicated entity.

18. **Assignment of Claims.** All Parties warrant and represent to the other that no claims they might have, or do have, and which are otherwise referenced and released by this Agreement, have been assigned to any other Party or Parties.

19. **Proprietary and Confidential Information/Other Company Property.** Employee agrees that their obligation to Employer not to use Employer's proprietary or confidential Company information, for personal gain or to the Employer's detriment, continues after Employee's employment relationship ends.

20. **Confidentiality and Nondisparagement.** Employee agrees that the terms and conditions of this Agreement and any and all actions by the Parties in accordance with this Agreement are strictly confidential, except that Employee may disclose the terms of this Agreement to Employee's attorneys, insurance carriers or representatives, professional advisors, and accountants, or as may be required by applicable law. Employee agrees to take all reasonable steps necessary to ensure that the confidentiality of this Agreement is maintained, including informing any of the individuals or entities referenced above to whom disclosure is authorized of the confidentiality. Employee agrees to accept responsibility for any breach of confidentiality by

individuals or entities to whom disclosure of the terms of the Agreement is made. The Parties agree that a breach of this paragraph is a material breach for which damages would be hard to ascertain.

The Parties acknowledge that the claims released herein have been amicably resolved. Therefore, **Employee will not disparage, slander or defame Employer.** Employee further agrees that if any direct or indirect inquiry is made of Employee regarding this Agreement, Employee will simply acknowledge, in substance, that "I separated from employment," or "I was laid off from my employment," and nothing more.

The Parties recognize and acknowledge that the confidentiality and non-disparagement agreements are material terms of this Agreement, and that Employee's violation of this paragraph will constitute a material breach. The provisions of this paragraph may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered. Notwithstanding the foregoing, Employee shall not be considered in breach of this paragraph for any statements made to governmental agencies in connection with their application for unemployment benefits.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement voluntarily. The undersigned hereby warrant that they understand and expressly agree to the terms of this Agreement, that they are legally authorized and entitled to settle and to release every claim herein released and to give a valid, full and final acquittance therefor, and that they have had an opportunity to consult with their own, independent legal counsel before executing this Agreement.

Dated: _____

EMPLOYEE: _____
(PRINT NAME)

(SIGNATURE)

Dated: _____

EMPLOYER:
HUMANE SOCIETY OF THE DESERT

_____, Director and

(Title)